

§ 3.1705 Burial allowance based on non-service-connected death.

(a) *General rule.* VA will pay the maximum burial allowance specified in 38 U.S.C. 2302 for the burial and funeral expenses of a veteran described in paragraph (b) of this section, unless VA has evidence on the date it receives notice of the veteran's death that the expenses incurred were less than that amount. Payment of the non-service-connected burial allowance is subject to other applicable regulations in subpart B of this part.

(b) *Eligibility.* A burial allowance is payable under this section for a veteran who, on the date of death:

(1) Was receiving VA pension or disability compensation;

(2) Would have been receiving disability compensation but for the receipt of military retired pay; or

(3) Had pending any of the following claims:

(i) An original claim for pension or disability compensation, and the evidence in the claims file on the date of death and any evidence received under paragraph (d) of this section is sufficient to grant pension or disability compensation effective before the date of death; or

(ii) A claim to reopen a previously denied pension or disability compensation claim, based on new and material evidence, and the evidence in the claims file on the date of the veteran's death and any evidence received under paragraph (d) of this section is sufficient to reopen the claim and grant pension or disability compensation effective before the date of death; or

(iii) A claim for which a person would be eligible to substitute for the deceased veteran under 38 U.S.C. 5121A, Substitution in case of death of claimant, and that claim, once processed to completion by the substitute, results in the grant of pension or disability compensation effective before the date of death.

(c) *Evidence in the claims file on the date of the veteran's death* means evidence in VA's possession on or before the date of the deceased veteran's death, even if such evidence was not part of the VA claims file on or before the date of death.

(d) *Requesting additional evidence.* If the veteran had either an original claim or a claim to reopen pending on the date of death and there is sufficient evidence in VA's possession to support an award of compensation or pension prior to the date of death, but VA determines that additional evidence is needed to confirm that the deceased would have been entitled prior to death, VA will request such evidence. If VA does not receive such evidence within 1 year after the date of the request, it will deny the claim.

(e) *Additional allowances available based on non-service-connected death.* In addition to the non-service-connected burial allowance authorized by this section:

(1) VA may reimburse for transportation expenses related to burial in a national cemetery under § 3.1709, Transportation expenses for burial in a national cemetery, but only if eligibility under paragraphs (b) of this section is based on a pending claim for, or award of, disability compensation, or eligibility for disability compensation but for receipt of military retired pay, rather than a claim for, or award of, pension; and

(2) VA may pay the plot or interment allowance for burial in a State veterans cemetery under § 3.1707(a), Plot or interment allowance.

(Authority: 38 U.S.C. 2302, 2303, 2304, 2308)

Cross Reference: § 3.1(i), for the definition of "State".

§ 3.1706 Burial allowance for a veteran who died while hospitalized by VA.

(a) *General rule.* VA will pay up to the maximum burial allowance specified in 38 U.S.C. 2303(a) for the burial and funeral expenses of a veteran described in paragraph (b) of this section.

(b) *Eligibility.* A burial allowance is payable under this section for a veteran whose death was not service-connected and who died while hospitalized by VA. For purposes of this allowance, a veteran was hospitalized by VA if the veteran:

(1) Was properly admitted to a VA facility (as described in 38 U.S.C. 1701(3)) for hospital, nursing home, or domiciliary care under the authority of 38 U.S.C. 1710 or 1711(a);

(2) Was transferred or admitted to a non-VA facility (as described in 38 U.S.C. 1701(4)) for hospital care under the authority of 38 U.S.C. 1703;

(3) Was transferred or admitted to a nursing home for nursing home care at the expense of the U.S. under the authority of 38 U.S.C. 1720;

(4) Was transferred or admitted to a State nursing home for nursing home care for which payment is authorized under the authority of 38 U.S.C. 1741;

(5) Was traveling under proper prior authorization, and at VA expense, to or from a specified place for purpose of examination, treatment, or care; or

(6) Was hospitalized by VA pursuant to any of paragraphs (b)(1) through (4) of this section but was not at the facility at the time of death and was:

(i) On authorized absence that did not exceed 96 hours at the time of death;

(ii) On unauthorized absence for a period not in excess of 24 hours at the time of death; or